

the determination required by this subsection.

(g) *Enforcement.* If any person upon whom a subpoena or SRO is served pursuant to this section, refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the United States District Court to enforce the subpoena or SRO.

(h) *Certification.* (1) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that a diligent search has been made for each document responsive to the subpoena, and to the best of his knowledge, information, and belief all such documents responsive to the subpoena are being produced unless withheld on the grounds of privilege pursuant to paragraph (i) of this section.

(2) Any information furnished in response to an SRO shall be accompanied by the sworn certification under penalty of perjury of the person to whom it was directed or his authorized agent who actually provides the information that to the best of his knowledge, information and belief a diligent effort has been made to provide all information required by the SRO, and all information furnished is true, complete, and correct unless withheld on grounds of privilege pursuant to paragraph (i) of this section.

(3) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason for failing to comply with the subpoena or SRO.

(i) *Withheld information.* If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (h) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent

the document, the privilege relied upon as the basis for withholding the document or information, a memorandum of law supporting the claim of privilege, and an identification of the person whose privilege is being asserted.

(j) *Statements/testimony.* (1) If a person's statement/testimony is taken pursuant to a subpoena, the DOE Official shall determine whether the statement/testimony shall be recorded and the means by which it is recorded.

(2) A person whose statement/testimony is recorded may procure a copy of the transcript by making a written request for a copy and paying the appropriate fees. Upon proper identification, any potential witness or his attorney has the right to inspect the official transcript of the witness' own statement or testimony.

(k) *Sequestration.* The DOE Official may sequester any person who furnishes documents or gives testimony. Unless permitted by the DOE Official, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(l) *Attorney.* (1) Any person whose statement or testimony is taken may be accompanied, represented and advised by his attorney; provided that, if the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(2) The DOE Official shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. The DOE Official may take actions as the circumstances may warrant in regard to any instances where any attorney refuses to comply with directions or provisions of this section.

#### § 820.9 Special assistant.

A DOE Official may appoint a person to serve as a special assistant to assist the DOE Official in the conduct of any proceeding under this part. Such appointment may occur at any appropriate time. A special assistant shall be subject to the disqualification provisions in § 820.5. A special assistant may perform those duties assigned by the DOE Official, including but not limited

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to, serving as technical interrogators, technical advisors and special master.

### § 820.10 Office of the docketing clerk.

(a) *Docket.* The Docketing Clerk shall maintain a docket for enforcement actions commencing with the issuance of a Preliminary Notice of Violation, interpretations issued pursuant to subpart D of this part, exemptions issued pursuant to subpart E of this part, and any other matters designated by the Secretary. A docket for an enforcement action shall contain all documents required to be filed in the proceeding.

(b) *Public inspection.* Subject to the provisions of law restricting the public disclosure of certain information, any person may, during Department business hours, inspect and copy any document filed with the Docketing Clerk. The cost of duplicating documents shall be borne by the person seeking copies of such documents. The DOE Official may waive this cost in appropriate cases.

(c) *Transcript.* Except as otherwise provided in this part, after the filing of a Preliminary Notice of Violation, all hearings, conferences, and other meetings in the enforcement process shall be transcribed verbatim. A copy of the transcript shall be filed with the Docketing Clerk promptly. The Docketing Clerk shall serve all participants with notice of the availability of the transcript and shall furnish the participants with a copy of the transcript upon payment of the cost of reproduction, unless a participant can show that the cost is unduly burdensome.

### § 820.11 Information requirements.

(a) Any information pertaining to a nuclear activity provided to DOE by any person or maintained by any person for inspection by DOE shall be complete and accurate in all material respects.

(b) No person involved in a DOE nuclear activity shall conceal or destroy any information concerning a violation of a DOE Nuclear Safety Requirement, a Nuclear Statute, or the Act.

### § 820.12 Classified, confidential, and controlled information

(a) *General rule.* The DOE Official in charge of a proceeding under this part

may utilize any procedures deemed appropriate to safeguard and prevent disclosure of classified, confidential, and controlled information, including Restricted Data and National Security Information, to unauthorized persons, with minimum impairment of rights and obligations under this part.

(b) *Obligation to protect restricted information.* Nothing in this part shall relieve any person from safeguarding classified, confidential, and controlled information, including Restricted Data or National Security Information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

### § 820.13 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, and pursuant to section 3213 of Pub. L. 106-65, as amended (codified at 50 U.S.C. 2403), the NNSA, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

- (1) Subpoenas;
- (2) Orders to compel attendance;
- (3) Disclosures of information or documents obtained during an investigation or inspection;
- (4) Preliminary notices of violations; and
- (5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

[72 FR 31921, June 8, 2007]

## Subpart B—Enforcement Process

### § 820.20 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures for investigating the nature and extent of violations of the DOE Nuclear Safety Requirements, for determining, whether a violation has occurred, for imposing an appropriate remedy, and for adjudicating the assessment of a civil penalty.

(b) *Basis for civil penalties.* DOE may assess civil penalties against any person subject to the provisions of this part who has entered into an agreement of indemnification under 42 U.S.C. 2210(d) (or any subcontractor or